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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,201	08/08/2003	Rosalyn J. Williams	DAP/580P2	4097
26875	7590	01/25/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			PRICE, CRAIG JAMES	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/637,201	WILLIAMS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Craig Price	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11/23/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-14 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14 and 16-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Examiner notes that the amended claims 23,25 and 26 have not been corrected for the insufficient antecedent basis as stated in the previous office action.

### ***Drawings***

2. Examiner notes that claim 15, has been cancelled and the objection to the drawings are now moot.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,3,4,5,6,11,12, 22 and 28 are rejected under 35 U.S.C. 102 (b) as being anticipated by Jackson et al. (5,137,184).

Regarding claim 1, Jackson et al. (5,137,184) disclose an apparatus, as seen in Figure 1, for adjusting the dispensation of material from a container (15) having a shoulder (24) when the container is supported by a dispenser (22,23), which comprises of an elongated tube (42) having an inner diameter, a proximal end (perpendicular surface close to 46) and a distal end portion (the leftmost end in Figure 2), where the

Art Unit: 3753

proximal end adapted to receive the material from the container, the distal end portion adapted to dispense the material, a flange (41) attached to the proximal end (near 46) of the tube, the flange operably sandwiched between the container shoulder and the dispenser, as seen in Figure 2, the flange (41) adapted to keep the apparatus in contact with the container shoulder during the dispensation of the material from the container, and a raised seal (46 projected from 41) having a perimeter, the seal is attached medially (47 extends toward the middle of the flange) to the flange, the seal is adapted to seal the apparatus (40) against the container shoulder during the dispensation of the material from the container.

Regarding claim 3, Jackson et al. (5,137,184) disclose an inner diameter (internal to 42) of the tube (42), which is sized to operably permit at least a portion of the container to be positioned within the tube, as seen in Figure 2.

Regarding claim 4, where the tube has a variable inner diameter, as seen in Figure 2.

Regarding claim 5, the tube is tapered, as seen in Figure 2.

Regarding claim 6, Jackson et al. (5,137,184) disclose the proximal end (perpendicular surface close to 46), as seen in Figures 2 and 3, of the tube is wider than the distal end portion (leftmost portion of Figure 2) of the tube.

Regarding claim 11, Jackson et al. (5,137,184) disclose a seal that is a raised ring (46, as seen in Figure 3) that extends away from the flange (41) and away from the proximal end of the tube (near 46).

Regarding claim 12 and 16, Jackson et al. (5,137,184) disclose that the flange

Art Unit: 3753

(41) has a diameter and the seal has an exterior diameter (near 47, as seen in Figure 3), and wherein the diameter of the flange is greater than the exterior diameter of the seal.

Regarding claim 22, Jackson et al. (5,137,184) disclose an elongated tube (42) having inner and outer diameters (inner and outer diameters of 42) and proximal (near 46) and distal ends (leftmost end in Figure 2), a flange (41) projecting radially outwardly of the tube adjacent to the proximal end thereof and having an upper surface (perpendicular to flange diameter 46, adjacent to 36) facing toward the tube distal end and a lower surface facing away from the tube distal end, and an annular sealing ring (perpendicular to 46) mounted on the lower surface of the flange and projecting away therefrom, as seen in Figure 3.

Regarding claim 28, Jackson et al. (5,137,184) disclose the proximal end of the tube has a diameter and the seal has an interior diameter, and wherein the diameter of the proximal end of the tube (somewhere on the angular surface near the vertex of the inside diameter of 46 and the angle inside diameter of 42) is less than interior diameter of the seal.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Art Unit: 3753

Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 7, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133).

Jackson et al. have taught all of the features of the claimed invention except that the flange is comprised of a plurality of radially extending arms, in which the flange is scalloped and having a plurality of concave portions. Zimmerman teaches the use of a nozzle (28) having a flange (34), which has a plurality of radially extending arms (36), and where the radially extending arms are scalloped, as seen in Figure 2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. (41) to have a plurality of radially extending arms, as taught by Zimmerman (3,235,133) in (Col.2, Lns. 41-46), in

Art Unit: 3753

order to provide a flange, for ease of gripping.

7. Claims 13,14,16-21,27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133) and Boaz et al. (5,833,099).

Jackson et al. have taught all of the features of the claimed invention except that the flange is comprised of a plurality of radially extending arms that are scalloped, and have concave portions, where the concave portions of the scalloped flange do not inwardly extend inside the perimeter of the seal ring, and the tube is flexible.

Zimmerman discloses a nozzle (28) with a flange (34), where the outermost diameter of the flange, contains the plurality of radially scalloped concave portions (36). Boaz et al. teach the use of a flexible caulking nozzle (14c) (Col.1, Lns. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. to have the plurality of radially scalloped concave portions as taught by Zimmerman in Figure 2, and in (Col.2, Lns.41-46), in order to provide a flange for ease of gripping.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. and Zimmerman to be flexible, as taught by Boaz et al. in (Col. 1, Lns. 5-16), in order to provide a nozzle constructed from a softer material which functions to allow directionally dispensing caulking compound.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Boaz et al. (5,833,099).

Jackson et al. have taught all of the features of the claimed invention except that the tube is flexible. Boaz et al. teach the use of a flexible caulking nozzle (14c) (Col. 1, Lns. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. to be flexible, as taught by Boaz et al. in (col. 1, ll. 5-16), in order to provide a nozzle constructed from a softer material which functions to allow directionally dispensing caulking compound.

9. Claims 23-26, are rejected under 35 U.S.C. 103(a) as being obvious over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133) and Boaz et al. (5,833,099).

Jackson et al. disclose all of the features of the claimed invention except that the flange is comprised of a plurality of radially extending arms that are scalloped, and have concave portions with inner extremities of the portions being disposed outwardly, where the concave portions of the scalloped flange do not inwardly extend inside the perimeter of seal. Zimmerman discloses a nozzle (28) with a flange (34), where the outermost diameter of the flange, contains the plurality of radially scalloped concave portions (36). Boaz et al. teach the use of a flexible caulking nozzle (14c) (Col.1, Lns. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. to have the plurality of radially scalloped concave portions with inner extremities of the portions being disposed outwardly of the annular ring as taught by Zimmerman in Figure 2, and in (Col.2, Lns.41-



46), in order to provide a flange for ease of gripping.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. and Zimmerman to be flexible, as taught by Boaz et al. in (Col. 1, Lns. 5-16), in order to provide a nozzle constructed from a softer material which functions to allow directionally dispensing caulking compound.

### ***Response to Arguments***

4. Applicant's arguments filed on November 23, 2005 have been fully considered but they are not persuasive.

In regards to your first argument,

"Jackson et al. fail to disclose an elongated tube". Tube is defined as a hollow cylinder, especially one that conveys a fluid or functions as a passage. The tapered hollow cylinder (42) as depicted in Figure 2 of Jackson et al., conveys fluid, i.e. caulking material. The discussion of the item being elongated is that there are no dimensions provided in either of the nozzles of Jackson et al. or the Applicants, therefore one can not say that one nozzle is longer than the other. The shoulder of the container abuts the flange as seen in Figure 2 of Jackson et al. The raised seal of Jackson et al. is attached to the flange and extends toward the middle of the flange (47) as seen in Figure 3.

In regards to your next argument that, "no portion of the container is permitted to operable be positioned within the tube", Figures 2 and 3 of Jackson et al. both indicate

Art Unit: 3753

the extended portion (45), and Figure 2 shows the container (15) being assembled into the depth of this extension.

In regards to your argument concerning claim 16, Examiner appreciates applicants' acknowledgement of the obvious typographical error. The present action has corrected the typographical error and has now properly grouped this claim with the appropriate rejection.

In regards to your argument concerning claim 22, the flange (41) is attached to the proximal end of the elongated tube (42). The outer diameter of the proximal end on a point on the inside of the tapered inner diameter is less than the inner diameter of the sealing ring, as seen in Figure 2.

In regards to your argument concerning claims 7,8,and 9, the motivation for combining the liquid dispenser of Zimmerman et al. with the liquid dispenser of Jackson et al. is clearly stated in Col. 2, Line 45, "for ease of gripping", the knurled flange is shaped to meet the claimed limitations, as scalloped and having concave portions, as shown in Figure 2 and 4 of Zimmerman et al.

In regards to your discussion concerning claims, 13 and 14, the motivation is clearly stated for combining the caulking gun nozzle of Boaz et al with the caulking gun nozzle Jackson et al. is to provide a softer flexible material which functions to allow directionally dispensing caulking compound (Col. 1, Lns. 11-14). The shape of the exterior camming strips (44) as seen in Figure 4 are wider at the top which would provide the necessary locking mechanism as required, and taper down towards the end

of the nozzle would allow for flexibility of movement to apply caulking material in the direction where needed.

In regards to the argument concerning claim 27, "the inner extremities of the inward portions of the concave portions are disposed outwardly of the sealing ring" as shown by the Figures 2 and 4 in Zimmerman et al.

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712. The examiner can normally be reached on 8AM - 5PM M-F.

Art Unit: 3753

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP



January 17, 2006



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Eric Keasel  
Primary Examiner  
Art Unit 3754